

APPENDIX**Circular of the New York State Combined Council
of Law Enforcement Officials**

Circular No. 25.

**INSTRUCTIONS TO MEMBERS OF THE FORCE CONCERNING
THE "STOP AND FRISK" (CHAPTER 86) AND
"NO KNOCK" (CHAPTER 85) LAWS**

Two new statutes, with major impact on police authority, become effective in New York State on July 1, 1964.

These laws, if properly utilized, can be of considerable aid in safeguarding our communities. Their passage resulted in part from the combined strenuous efforts expended by New York State's various law enforcement agencies. As in the case with all other law enforcement powers, whether or not these sorely-needed enactments will withstand the attacks that will be made upon their constitutionality, and will stand as laws upon the books of this State, will depend in large measure upon the fashion in which they are carried out. They should be enforced with full recognition that their purposes are to protect the community, while simultaneously protecting and treating fairly all persons in it.

Every member of the force has the responsibility of seeing to it that the powers conferred by these new statutes are used to further those purposes for which they were enacted. Some guidelines for proper conduct pursuant to these statutes are set forth herein:

I THE "STOP-AND-FRISK" LAW (Chapter 86, Laws of 1964)

The new statute, which becomes § 180-a of the Code of Criminal Procedure, provides as follows:

§ 180-a. Temporary questioning of persons in public places; search for weapons.

1. A police officer may stop any person abroad in a public place whom he reasonably suspects is committing, has committed or is about to commit a felony or any of the crimes specified in section five hundred fifty-two of this chapter, and may demand of him his name, address and an explanation of his actions.

2. When a police officer has stopped a person for questioning pursuant to this section and reasonably suspects that he is in danger of life or limb, he may search such person for a dangerous weapon. If the police officer finds such a weapon or any other thing the possession of which may constitute a crime, he may take and keep it until the completion of the questioning, at which time he shall either return it, if lawfully possessed, or arrest such person.

A. GENERAL PRINCIPLES:

1. The new law does not permit an officer to stop just any passer-by and search him, nor does it allow the search of any person merely because he has a criminal record.

2. The new law does not permit the stopping and searching of any person found in the vicinity of a crime scene, merely because he happens to be there.

3. The new law does not dispense with the need for adequate observation and investigation, depending upon all the circumstances, before a stop is made.

4. No officer should stop anyone, under the new law, unless he is prepared to explain, with particularity, his reasons for stopping such person.

5. No officer should stop anyone, under the new law, unless the crime he reasonably suspects is a felony or one of those misdemeanors listed in § 552 of the Code of Criminal Procedure.

6. When a person is stopped under the new law, the officer—if not in uniform—must properly and promptly identify himself to the person stopped.

7. Not everyone stopped may be searched; searches are only permitted when the officer reasonably suspects that he is in danger.

8. The right to stop provided in the new law in no way changes the previously existing authority of an officer to make an arrest without an arrest warrant, as provided by § 177 of the Code of Criminal Procedure. The new rights to stop and to search, as defined in the new statute, are separate and distinct from the established right to arrest, as provided by existing law, and to make a complete search incident to such arrest.

9. Whether or not an arrest follows a stopping under the new law, whenever any force is used in stopping the suspect, or whenever any frisk or search is made, a written report shall be made to the officer's superior officer. Form for such reports, together with instruc-

tions for their use, will be distributed with separate orders.

B. THE RIGHT TO "STOP."

1. "stop":

The new statute gives the officer the right to stop a person under the indicated circumstances. If the suspect refuses to stop, the officer may use reasonable force, but only by use of his body, arms and legs. He may not make use of a weapon or nightstick in any fashion. (Of course, if there is an assault on the officer or other circumstances sufficient to justify an arrest, the officer may use necessary force to effect that arrest.)

2. "abroad in a public place":

- a. For the purposes of practical enforcement procedures, this phrase is viewed as being restricted to public highways and streets, beaches and parks (to include outdoor facilities open to the public even though privately owned), depots, stations, and public transportation facilities.
- b. For the purpose of practical enforcement procedures, this phrase is viewed as not including the public portions of private buildings such as hotel lobbies, moving picture theatres, licensed premises, etc.
- c. Definitions of the words "public place" as found in other laws, such as those dealing with disorderly conduct, are not to be substituted for the strict definition of "abroad in a public place" as outlined above.

3. "whom he reasonably suspects":

a. The words "reasonably suspects" are not to be lightly regarded; they are not, just an incidental phrase; they have real meaning. "Reasonable suspicion" is clearly more than "mere suspicion." At the same time it is something less than "reasonable ground for believing" that a crime is being committed, as is necessary for an arrest.

b. No precise definition of "reasonably suspects" can be provided, other than that it is such a combination of factors as would merit the sound and objective suspicions of a properly alert law enforcement officer, performing his sworn duties. Among the factors to be considered in determining whether or not there is "reasonable suspicion" are:

- i. The demeanor of the suspect.
- ii. The gait and manner of the suspect.
- iii. Any knowledge the officer may have of the suspect's background or character.
- iv. Whether the suspect is carrying anything, and what he is carrying.
- v. The manner in which the suspect is dressed, including bulges in clothing—when considered in light of all of the other factors.
- vi. The time of the day or night the suspect is observed.
- vii. Any overheard conversation of the suspect.
- viii. The particular streets and areas involved.

- ix. Any information received from third persons, whether they are known or unknown.
- x. Whether the suspect is consorting with others whose conduct is "reasonably suspect."
- xi. The suspect's proximity to known criminal conduct.

(This listing is not meant to be all inclusive.)

- c. "Reasonable suspicion" of any crime at all does not afford a basis for stopping under the new law; there must be reasonable suspicion that the suspect is committing, has committed, or is about to commit either any felony or one of those misdemeanors enumerated in § 552 of the Code of Criminal Procedure. (These misdemeanors are weapons crimes, burglar's tools, receiving stolen property, unlawful entry, escape, impairing, carnal abuse, indecent exposure, obscenity and other indecency provisions, sodomy, rape, narcotics, amphetamines and hypodermic needles.) Suspicion of disorderly conduct, an offense, is not for the purpose of practical enforcement procedures a basis for stopping.

C. THE RIGHT TO "QUESTION".

- 1. No questions are to be asked until the officer has, either by being in uniform or by showing his shield and stating he is a police officer, identified himself.
- 2. Promptly thereafter, the suspect should be questioned (and frisked, when appropriate) in the immediate area in which he was stopped.

3. Should the suspect refuse to answer the officer's questions, the officer cannot compel an answer and should not attempt to do so. The suspect's refusal to answer shall not be considered as an element by the officer in determining whether or not there is a basis for an arrest.

4. In ascertaining "his name" from the suspect, the officer may request to see verification of his identity, but a person shall not be compelled to produce such verification.

5. If the suspect does answer, and his answers appear to be false or unsatisfactory, the officer may question further. Answers of this nature may serve as an element in determining whether a basis for arrest exists. (But if an officer determines that an answer is "unsatisfactory" and relies upon this in part to sustain his arrest, he should be able to explain with particularity the manner in which it is "unsatisfactory.")

6. If, after he has been stopped and the officer has identified himself, the suspect attempts to flee from the officer, this fact may be an element in determining whether a basis for arrest exists. However, the officer should not resort to the use of a weapon or other extraordinary means to stop the flight unless he has information which now leads him to reasonably believe that the suspect has committed a felony.

D. THE RIGHT TO "SEARCH."

1. Clearly no right to search exists unless there is a right to stop.

2. Nor is a search lawful in every case in which a right to stop exists. A search is only justified under the new law when the officer reasonably suspects that he is in danger. This claim is not to be used as a pretext for obtaining evidence. In instances in which evidence is produced as a result of a search, the superior officers, the prosecutors, and—it is anticipated—the courts, will scrutinize particularly closely all the circumstances relied upon for justifying the stopping and searching.

3. No search is appropriate unless the officer “reasonably suspects that he is in danger.” Among the factors that may be considered in determining whether to search are:

- a. Nature of the suspected crime, and whether it involved the use of a weapon or violence.
- b. The presence or absence of assistance to the officer, and the number of suspects being stopped.
- c. The time of the day or night.
- d. Prior knowledge of the suspects’ record and reputation.
- e. The sex of the suspect.
- f. The demeanor and seeming agility of the suspect; and whether his clothes so bulge as to be indicative of concealed weapons.

(This listing is not meant to be all inclusive.)

4. Initially, once the determination has been made that the officer may be in danger, all that is necessary is a frisk—an external feeling of clothing—such as would reveal a weapon of immediate danger to the officer.

5. A search of the suspect's clothing and pockets should not be made unless something is felt by this frisk—such as a hard object that feels as if it may be a weapon. In such event, the officer may search that portion of the suspect's clothing to uncover the article that was felt.
6. If the suspect is carrying an object such as a handbag, suitcase, sack, etc. which may conceal a weapon, the officer should not open that item, but should see that it is placed out of reach of the suspect so that its presence will not represent any immediate danger to the officer.

E. AN EXAMPLE:

An example may help to illustrate. Assume that a mugging has just occurred. The officer questions the victim. She says that her pocketbook was taken and she gives a description of the suspect stating, among other things, that he is about six feet tall and was wearing a brown leather windbreaker. While the victim is receiving medical treatment, the officer starts a search of the area. He sees a man hurrying down a dark street. The man's hand is clutching at a bulge under his brown windbreaker, and he glances back at the officer repeatedly. The suspect meets the description of the perpetrator except for one discrepancy: he is only five feet tall.

The officer does not have reasonable grounds to arrest the suspect for his description is clearly inconsistent with the victim's estimate of the perpetrator's height. However, from the officer's experience he realizes that victims of crime, in an excited condition, often give descriptions which are not correct in every detail. Although he lacks reason-

able grounds to make an arrest, from all of the circumstances the officer "reasonably suspects" that the man he has spotted has committed the crime. Under the new law, the officer may stop this person, and may ask for his identification and an explanation of his actions. And because the crime involved violence and the suspect's windbreaker seems to conceal unnatural bulges, a frisk may be in order.

